

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

ELLENTON EQUITIES, LLC,)	
)	
Plaintiff,)	
v.)	
)	Case No. 3:09-cv-00157-WTL-WGH
BAUER HOMES, INC., ALFRED H. BAUER, JR.,)	
BARE, LLC, CONGER PLUMBING, RAYS'S HEATING)	
& AIR CONDITIONING, INC., TIME ZELLER,)	
CANNON CONCRETE SERVICES, INC., WRIGHT)	
CONSULTANTS, LLC, ADAMS PLUMBING, INC.,)	
TONI GRIM BAUER, EVANSVILLE COMMERCE)	
BANK, TREASURER OF VANDERBURGH)	
COUNTY, UNITED STATES OF AMERICA,)	
)	
Defendants.)	

MOTION FOR STAY

Comes now the United States of America, on behalf of its agency, Internal Revenue Service, and respectfully moves the Court to stay proceedings in this case, as the issue before the Court is presently pending before the Seventh Circuit in *Bloomfield State Bank. v. United States of America*, Case No. 10-3939. A stay of this matter until after a ruling by the Seventh Circuit is in the interest of judicial efficiency and economy. In support hereof, the United States would advise the Court as follows:

1. Currently, the deadline for filing dispositive motions is March 15, 2011.
2. The issue that would be briefed involves the relative priority of Plaintiff and the IRS on certain rental payments.
3. In its complaint, Ellenton Equities seeks to recover, *inter alia*, rents and profits from the real estate upon which it seeks to foreclose.
4. The United States asserted in its answer that it has a lien against the property

described in Ellenton Equities's complaint by virtue of a lien filed with the County Recorder on January 9, 2009, in the total amount of approximately \$15,752.55 as of January 1, 2010. The United States also asserted that its lien has priority over other liens as to rents, as of the 46th day after the filing of the IRS lien, pursuant to 26 U.S.C. § 6323(c), and that its lien is first, prime, and prior as to any such rents.

5. The issue of the relative priority of IRS tax liens and mortgage liens has been litigated in this district in *Bloomfield State Bank v. United States of America*, Case No. 2:10-cv-131-LAM.-WGH. In that case, on October 27, 2010, the Court entered a judgment in favor of the United States on that issue.

6. Bloomfield State Bank appealed that decision. Appellant's Brief was filed on February 1, 2011, and the Appellee's Brief was filed on March 8, 2011.

7. Counsel for the Plaintiff has been provided a copy of the Order entered by the Court in the *Bloomfield State Bank* case.

8. No agreement has been reached between the parties as to the relative priorities on the rental payments.

9. In light of the above, it is in the interest of judicial efficiency and economy to stay this proceeding pending a ruling by the Seventh Circuit on the appeal in the *Bloomfield State Bank* case.

WHEREFORE, the United States of America, Internal Revenue Service, respectfully requests that this matter be stayed.

Respectfully submitted,

JOSEPH H. HOGSETT
United States Attorney

By: /s/ Jeffrey L. Hunter
Jeffrey L. Hunter
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2011, a copy of the foregoing **MOTION FOR STAY** was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system:

Robert R. Faulkner
rrfaulk@evansville.net
Counsel for Plaintiff

Marilyn Ratliff
ATTORNEY AT LAW
mrtlf50@aol.com
Counsel for Bauer Homes, Inc.

Max E. Fiester
RUDOLPH FINE PORTER & JOHNSON, LLP
mef@rfpj.com
Counsel for Ray's Heating & Air Conditioning

Joseph H. Langerak
RUDOLPH FINE PORTER & JOHNSON, LLP
jhl@rfpj.com
Counsel for Cannon Concrete Services, Inc.

Ole J. Olsen
OLSEN, WHITE, HAMBRIDGE & WILLIAMS, LLP
ojo@thelawteam.net
Counsel for Wright Consultants, LLC

Jean M. Blanton
ZIEMER STAYMAN WEITZEL & SHOULDERS, LLP
jblanton@zsws.com
Counsel for Treasurer of Vanderburgh County

/s/ Jeffrey L. Hunter
Jeffrey L. Hunter
Assistant United States Attorney

Office of the United States Attorney
Southern District of Indiana
10 West Market, Suite 2100
Indianapolis, Indiana 46204
Telephone: 317-226-6333